HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting)
Chapter VIII Rule 32(2) (b)

Description of the Case

Writ Petition No. 1484 (S/S) 2004

Kunwar Singh Bisht ... Petitioner

Vs.

State of Uttaranchal and another. ... Respondents

Approver for reporting.

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Not approved for reporting.

Date of decision 31st July 2006.

Initial of Judge.

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HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition no. 1484(S/S) 2004

Kunwar Singh Bisht S/o Sri Himmat Singh,
Resident of village & post-Jungaliya Gaon (Bhimtal),
District Nainital. ----Petitioner.

Versus

1. State of Uttaranchal through Secretary,
   Personnel & Administration,
2. Director Centre for Development Studies
   Academy of Administration, Nainital (ATI).

----Respondents.

Mr. Sobhit Saharia, Adv. for the petitioner,
Sri N.B. Tewari, learned Addl. Advocate General/C.S.C.
Assisted by Sri Paresh Tripathi, learned Standing counsel for the State.
Sri Sudhanshu Dhulia, learned Sr. Counsel assisted by Sri Vipul Sharma, learned counsel for respondent no.2.

Hon'ble M.M. Ghildiyal, J.

Heard Mr. Sobhit Saharia, Adv. for the petitioner, Sri N.B. Tewari, learned Addl. Advocate General/Chief Standing Counsel assisted by Sri Paresh Tripathi, learned Standing Counsel for the State. Sri Sudhanshu Dhulia, learned Sr. Counsel assisted by Sri Vipul Sharma, learned counsel for respondent no.2.

2. By the present writ petition, the petitioner has prayed for the following reliefs:-

a. A writ, order or direction in the nature of mandamus commanding/directing the respondents to regularise the services of the petitioner on the post of electrician in the respondent department,

b. Any other writ, order or direction, which this Hon'ble Court may deem fit and proper in the facts and

circumstances of the case may also be passed in favour of the petitioner,

c. Allow the writ petition with cost.

3. After filing the writ petition, the petitioner has moved amendment application for adding additional para in the grounds as well as in the prayer clause of the pleadings. After the Court's permission the amended relief incorporated is as under:-

bb. A writ, order or direction in the nature of certiorari, quashing the order dated 27.09.2005 passed by respondent no.2.

4. This Court on 16.12.2004 has passed order that since the petitioner has already worked for more than 11 years' and the work of Electrician is perennial in nature, the respondents shall permit the petitioner to continue on the work of Electrician till further orders of this Court.

5. The petitioner was granted one week time on 21.02.2006 for filing rejoinder affidavit. On 26.04.2006 the case was adjourned on the request of learned counsel for the petitioner. Again on 06.06.2006, the petitioner was granted two weeks' time to file rejoinder affidavit, however no rejoinder affidavit has been filed till today. On 28.07.2006, the case was listed under the title for order matters; on that date this Court passed order to list the case on Monday i.e. on 31st July 2006 under the caption of final hearing. Accordingly, the parties were heard at length.

6. The petitioner has filed an experience certificate issued by the Finance Controller, Centre for Development Studies, U.P. Academy of Administration, Nainital. A perusal of this certificate reveals that the petitioner was engaged as Electrician by the Centre for Development Studies, ATI, Nainital sometimes in the year 1993 and continued till 2004. Even after passing of the court's order dated 16.12.2004, the respondents did not permit the petitioner to continue on the post of Electrician and have also filed counter affidavit. In para-6 of the counter affidavit it has been averred that the petitioner has never worked in the Administrative Training Institute for any period in any capacity, and he has worked only for the Centre for Development Studies Academy of Administration, which is an autonomous body; within the ATI. In the circumstances, the petitioner is not liable to be regularised.

7. Learned counsel for the petitioner has contended that since the order passed by this Court dated 16.12.2004 was not complied with by the respondents, he was constrained to file contempt petition which is still pending before this Court. In the contempt petition the respondents were directed either to comply the order or to appear personally before the Court. Annoyed with the filing of contempt petition, the respondents are adamant not to provide work of Electrician to the petitioner.

8. The petitioner has vehemently relied upon the minutes of the meeting of the members of Administrative Training Institute, under the Chairmanship of the Director Administrative Training Institute, Nainital in clause-7 of the minutes it was resolved that there are two employees one Sri Amba Dutt Sanwal working as Electrician on regular basis and the other is Sri Kunwar Singh Bisht, i.e. the petitioner, working

on contract basis as Electrician. Duties of Electricians have been distributed between these two persons. Submission of the learned counsel for the respondents is that the society is and autonomous body working under the ATI for which separate funds was to be provided, which is now not available and, in fact, the society is not working for about last one year. The petitioner was engaged by the society and he was paid the wages by the society and not by the ATI. The society has already been wind up prior to one year and there is no vacant post of Electrician in ATI. Sri Amba Dutt Sanwal is working on regular basis against the single post of Electrician created in the ATI.

9. Learned counsel for the petitioner has also admitted that there is only one post of Electrician created in the ATI against which Sri Amba Dutt Sanwal is appointed on regular basis. He has admitted that there is no other post of Electrician created in the ATI no other post of Electrician is lying vacant in the ATI. In the circumstances when no post of Electrician is lying vacant and no other post of Electrician has been created by the Govt., this Court cannot direct the respondents to regularise the services of the petitioner on the post which is not in existence further the Court even cannot direct the respondents to take work from the petitioner on the post of Electrician, in absence of any post with the respondents' establishment.

10. Counsel for the petitioner has further submitted that it is true that the petitioner was engaged by the society and had worked for about 11 years, but the society is under the control of ATI.

11. The Administrative Training Institute has also advertised the posts for recruitment of Class-IV employees and the

petitioner is willing to apply against these posts, but he apprehends that after his becoming over-aged the respondents would not consider his application for recruitment. Counsel for the petitioner has submitted that the Court may pass order directing the respondents to consider the application of the petitioner, after giving relaxation in the upper age limit for the period he has worked with the respondent's establishment. This Court is not empowered to give relaxation to age limit in the matter of recruitments but it is upon the Govt. or upon the Competent Authority, who is making appointments, to accord relaxation in the upper age limit of any candidate on the ground that he had worked with the department of so long period. No order for relaxation in the upper age limit or for continuation of petitioner's services on contract basis can be passed by this Court inview of the **Apex Court's decision in the case of State of Karnatake vs. Uma Devi, reported in 2006 (4) Supreme Court Cases, page-1.**

12. The writ petition lacks merit and is dismissed as such. The interim order dated 16.12.2004 passed by the Court is hereby vacated. No order as to costs.

(M.M. Ghildiyal, J.)

July 31, 2006:
NCM: